

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 21-cr-250 (JRT/TNL)

Plaintiff,

v.

ORDER

Jing Chen,

Defendant.

This matter comes before the Court on the Government's Motion for Extension of Time to File Response, ECF No. 128.

On August 23, 2022, following a status conference with counsel, the Court set a briefing schedule and hearing date for Defendant Jing Chen's Motion to Dismiss for Pre-Indictment Delay, ECF No. 24, and Amended Motion to Dismiss for Pre-Indictment Delay, ECF No. 80 (collectively, "Pre-Indictment Delay Motions"). *See generally* ECF No. 127. Among other things, the briefing schedule directed the Government to respond by September 6, 2022, and gave Defendant the opportunity to file a reply by September 13, 2022. ECF No. 127 at 4. **The hearing on the Pre-Indictment Delay Motions is set for September 19, 2022.** ECF No. 127.

Citing professional and personal obligations, the Government states that it "needs additional time to research, draft, and file its response." ECF No. 128 at 1. The Government seeks an additional week, up until September 13, 2022, to file its response. The Government reached out to counsel for Defendant by e-mail regarding its request,

but had not yet received a response at the time of filing. Defendant has since objected to the Government's request.¹ *See generally* ECF No. 129

According to the Government, “[w]hile a response has not yet been received, the [G]overnment’s view is that the additional week it needs not [sic] prejudice [Defendant] or change the currently-scheduled motions hearing.” ECF No. 128 at 2. Applying the Government’s proposed extension and adjusting Defendant’s reply date accordingly would, however, result in Defendant’s reply being due on September 20, 2022, the day *after* the September 19 hearing.

While the Court appreciates and empathizes with the professional and personal obligations of the Government’s counsel, the Court is also cognizant of allegations of delay by the Government at issue in the Pre-Indictment Delay Motions, *see, e.g.*, ECF Nos. 25 at 1-12, 81 at 1-12, and at other times in this case, *see, e.g.*, ECF Nos. 69 at 3-5, 104 at 4-6.

The Court is not inclined to continue the hearing on the Pre-Indictment Delay Motions under the circumstances of this case.

Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The Government’s Motion for Extension of Time to File Response, ECF

¹ To the extent Defendant requests that the Government “disclose all Jencks Act Materials by next Friday, September 16, 2022, at 5:00 p.m.,” ECF No. 129 at 3, such request is denied. “At the status conference, the Government agreed to make available to Defendants ‘hot documents’ and the transcript of any grand jury proceedings as well as any exhibit list and exhibits introduced in those proceedings *to the extent such a list was used or any exhibits were introduced.*” ECF No. 127 at 1 (emphasis added). Defendant complains that “[t]he Government disclosed a single, short, [g]rand [j]ury transcript of the testimony of a single agent, John Tschida, who summarily agreed with the Government’s recitation of the evidence in leading question format and without reference to any exhibits.” ECF No. 129 at 3 n.1. By Defendant’s own account, the Government has complied with what it offered to provide.

No. 128, is **GRANTED IN PART** and **DENIED IN PART**.

2. The Government shall respond to the Pre-Indictment Delay Motions on or before **September 9, 2022**.

3. Defendant shall file an Amended Notice of Intent to Call Witnesses solely as to the Pre-Indictment Delay Motions on or before **September 9, 2022**.

4. Defendant may file a reply to the Government's response on or before **September 16, 2022**.

5. Any Responsive Notice of Intent to Call Witnesses as to the Pre-Indictment Delay Motions shall be filed on or before **September 16, 2022**.

6. The hearing on the Pre-Indictment Delay Motions shall remain as previously scheduled and take place before the undersigned on **September 19, 2022, at 10:00 a.m.**, in Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

7. Defendant's arraignment, ECF No. 127 at 4-5, shall remain as previously scheduled and take place before the undersigned on **September 19, 2022, at 10:00 a.m.**, in Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

8. All prior consistent Orders remain in full force and effect.

Dated: September 7, 2022

s/ Tony N. Leung
TONY N. LEUNG
United States Magistrate Judge
District of Minnesota

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